Sebumi Magnetik Sdn Bhd v Twinsky Seafood Restaurant (Complex Asia City) Sdn Bhd (formerly known as Twinsky Seafood Restaurant Sdn Bhd) and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS S-02(IM)(NCvC)-1973–12 OF 2020 AND S-02(IM)(NCvC)-1984–12 OF 2020
HAS ZANAH MEHAT, LEE HENG CHEONG AND CHE MOHD RUZIMA JJCA
31 JULY 2023

Civil Law Act — Landlord and tenant — Claim for double rent — Whether landlord intending to claim for double rent or double value of demised premises from tenant holding over after determination of tenancy must specifically plead claim for that relief — Whether s 28(4)(a) of Civil Law Act 1956 gave landlord choice whether or not to claim for double rent or double value — Whether if landlord chose to make claim for either, it had to specifically plead accordingly so that tenant was not deprived of right to know exactly what was the claim it had to answer — Whether failure to specifically plead claim for double rent or double value would estop landlord from raising the matter later and also deprive court of jurisdiction to decide the issue

The appellant in Appeal No 1973 herein had rented a space in its food court to the first respondent ('R1') to run a seafood restaurant. Four years into the seven-year tenancy, R1 defaulted in paying the rent and other amounts due under the tenancy agreement. The appellant terminated the tenancy agreement and requested R1 several times to vacate the demised premises and hand over vacant possession. The respondent ignored the requests and continued to trade at the premises despite legal action being taken and judgment being entered against the respondents jointly and severally. The respondents finally quit the premises when a writ of possession taken out by the appellant was formally executed. In assessing damages against the respondents, the appellant had sought payment of double rent under s 28(4)(a) of the Civil Law Act 1956 ('the CLA'). The High Court did not allow the claim. The core issue in the instant appeal against the decision was whether a landlord was entitled under s 28(4)(a) of the CLA to claim payment of double rent or double the value of the demised premises from a tenant who continued to occupy demised premises after determination of the tenancy if the claim for the same had not been specifically pleaded in the statement of claim, ie, whether the landlord could claim the same as of right by operation of law and whether it was sufficient if the landlord had pleaded the material facts of trespass by the tenant after the tenancy agreement had been determined.

Held, unanimously dismissing the appeals: A

(1) It was crystal clear from a reading of the appellant's statement of claim that it had not raised any claim for double rent or double value of the demised premises (see para 22).

(2) Under s 28(4)(a) of the Civil Law Act 1956 ('CLA'), every tenant who continued to stay on the landlord's property after termination of the tenancy was liable to pay double rent or double the value of the property during the period of stay. However, the right to charge double rent or double value under the law was not mandatory. The words 'at the option of his landlord' after the words 'shall be chargeable' denoted that the landlord had the choice to claim or not to claim double rent or double value of the property. Therefore, the right given to the appellant under s 28(4)(a) of the CLA to claim double rent or double value against the respondents was a chose in action or a cause of action that was subject to the strict rule of pleadings (see para 24). B C D

(3) Stemming from the right that was optionally given under s 28(4)(a) of the CLA, the appellant had to state its intention to exercise the option to claim double rent or double value against the respondents in its statement of claim. Such a claim was not a matter of right under the law. It had to be specifically pleaded if the appellant opted to make the claim, failing which the appellant would have deprived the respondents of their right to know with clarity and precision the issues or questions which were in dispute between themselves and the appellant and which fell to be determined by the court. At the same time, it was incumbent on the appellant to inform the court as to what were the precise matters in issue between the parties that required determination (see para 25). E F

(4) In the instant case, the appellant had not opted to pursue its right under s 28(4)(a) of the CLA and therefore it was estopped from raising it and the court was not empowered nor had the jurisdiction to consider the matter. It was not the court's duty to make out a case for the appellant when the appellant had not raised the point in its pleadings. The court did not agree with the argument that double rent or double value was chargeable by operation of law and that there was no requirement to plead the matter so long as the material facts, which would satisfy the requirements of s 28(4)(a) of the CLA, had been pleaded (see para 26). G H

(5) The general prayer in para (9) of the appellant's statement of claim which read 'Damages and compensation for trespass including aggravated and exemplary damages, to be assessed for the period from 5 November 2013 until delivery up of possession of the demised premises and the Reserved Area to the plaintiff' was insufficient to put in words the option opted by the appellant to make a claim for double rent or double value of the demised premises against the respondents (see para 27). I

(6) Order 18 r 15 of the Rules of Court 2012 required, inter alia, every statement of claim to state specifically the relief or remedy which the plaintiff intended to claim. Even though the court had jurisdiction to grant any relief that it thought fit and appropriate to the facts of the case, the requirement of the rule had to be followed by the appellant, especially in the present case, where the law required the appellant to choose whether or not to make a claim for double rent or double value against the respondents. The court was not entitled to decide a suit on a matter on which no issue had been raised by the parties (see paras 28–29).

[Bahasa Malaysia summary

Perayu di Rayuan No 1973 telah menyewa ruang di medan seleranya kepada responden pertama ('R1') untuk membuka restoran makanan laut. Empat tahun dari tempoh penyewaan selama tujuh tahun, R1 telah ingkar dalam membayar sewa dan jumlah lain yang perlu dibayar di bawah perjanjian penyewaan tersebut. Perayu telah menamatkan perjanjian penyewaan itu dan beberapa kali meminta R1 mengosongkan premis itu dan menyerahkan milikan kosong kepadanya. Responden tidak mengendahkan permintaan tersebut dan terus berniaga di premis tersebut walaupun tindakan undang-undang telah diambil dan penghakiman dimasukkan terhadap responden secara bersama dan berasingan. Responden akhirnya keluar dari premis itu apabila writ pemilikan yang dikeluarkan oleh perayu telah dilaksanakan. Dalam menilai ganti rugi terhadap responden, perayu telah memohon bayaran sewa dua kali ganda menurut s 28(4)(a) Akta Undang-Undang Sivil 1956 ('AUS'). Mahkamah Tinggi tidak membenarkan tuntutan itu. Isu utama dalam rayuan ini terhadap keputusan itu adalah sama ada pemilik berhak menurut s 28(4)(a) AUS untuk menuntut bayaran sewa dua kali ganda atau dua kali ganda nilai premis daripada penyewa yang terus menduduki premis itu yang mana ianya tidak diplidkan di dalam penyata tuntutan, yang mana, sama ada pemilik boleh menuntut hak tersebut menurut undang-undang dan sama ada ianya mencukupi sekiranya pemilik telah memplidkan fakta penting mengenai pencerobohan oleh penyewa selepas perjanjian penyewaan ditamatkan.

Diputuskan, sebulat suara menolak rayuan-rayuan:

(1) Adalah jelas menurut penyata tuntutan perayu bahawa tuntutan sewa dua kali ganda atau dua kali ganda nilai premis tidak diplidkan (lihatSAMPLEperenggan 22).

(2) Menurut s 28(4)(a) Akta Undang-Undang Sivil 1956 ('AUS'), setiap penyewa yang terus tinggal di hartanah pemilik selepas penamatan penyewaan bertanggungjawab untuk membayar sewa dua kali ganda atau dua kali ganda nilai hartanah tersebut ketika tempoh pendudukan. Walau bagaimanapun, hak untuk terhadap sewa dua kali ganda atau dua kali ganda nilai premis itu menurut undang-undang adalah tidak wajib.

Perkataan 'atas pilihan tuan tanahnya' selepas perkataan 'hendaklah dikenakan bayaran' menunjukkan bahawa pemilik mempunyai pilihan untuk menuntut atau tidak menuntut sewa dua kali atau nilai dua kali ganda hartanah tersebut. Oleh itu, hak perayu di bawah s 28(4)(a) AUS untuk menuntut sewa dua kali ganda atau dua kali ganda nilai hartanah terhadap responden adalah tindakan pilihan atau kausa tindakan yang memerlukan pematuhan kepada peraturan pliding (lihat perenggan 24).

(3) Berdasarkan hak yang diberikan secara pilihan di bawah s 28(4)(a) AUS, perayu perlu memplidkan niatnya untuk melaksanakan pilihan untuk menuntut sewa dua kali ganda atau dua kali ganda nilai premis terhadap responden di dalam pernyataan tuntutannya. Tuntutan sebegitu bukanlah hak di bawah undang-undang. Ianya perlu diplidkan secara khusus sekiranya perayu memilih untuk membuat tuntutan itu, sekiranya gagal, perayu menjejaskan hak responden untuk mengetahui dengan jelas mengenai isu yang menjadi pertikaian antara mereka untuk ditentukan oleh mahkamah. Pada masa yang sama, adalah menjadi kewajipan kepada perayu untuk memaklumkan kepada mahkamah isu yang jelas antara pihak yang memerlukan penentuan mahkamah (lihatSAMPLEperenggan 25).

(4) Dalam kes ini, perayu tidak memilih untuk meneruskan haknya di bawah s 28(4)(a) AUS dan oleh itu mereka telah dihalang untuk memohonnya. Mahkamah tidak mempunyai bidang kuasa untuk mempertimbangkan tuntutan itu. Ianya bukan kewajipan mahkamah untuk membuat kes bagi perayu apabila perayu tidak memplidkan tuntutan tersebut. Mahkamah tidak bersetuju dengan hujah bahawa sewa dua kali ganda atau dua kali ganda nilai premis boleh diberikan menurut kuat kuasa undang-undang dan bahawa tidak ada keperluan untuk memplidkan perkara itu selagi fakta penting memenuhi elemen di dalam peruntukan s 28(4)(a) AUS (lihat perenggan 26).

(5) Tuntutan umum di dalam perenggan (9) pernyataan tuntutan perayu yang menyatakan 'Kerosakan dan pampasan untuk pencerobohan termasuk ganti rugi teruk dan teladan, akan dinilai untuk tempoh dari 5 November 2013 sehingga penyerahan pemilikan premis itu dan Kawasan Simpanan ('Reserved Area') kepada plaintif' tidak mencukupi untuk menyatakan pilihan yang dibuat oleh perayu untuk membuat tuntutan sewa dua kali ganda atau dua kali ganda nilai premis itu terhadap responden (lihat perenggan 27).

(6) Aturan 18 k 15 Kaedah-Kaedah Mahkamah 2012 memerlukan, antara lain, setiap pernyataan tuntutan menyatakan secara khusus relif atau remedi yang ingin dituntut oleh plaintif. Walaupun mahkamah mempunyai bidang kuasa untuk memberikan sebarang relif yang difikirkan sesuai dan sesuai dengan fakta kes, keperluan peraturan perlu dipatuhi oleh perayu, terutamanya dalam kes ini, di mana

undang-undang memerlukan perayu memilih sama ada hendak membuat tuntutan sewa dua kali ganda atau dua kali ganda nilai premis terhadap responden. Mahkamah tidak bertanggungan untuk memutuskan isu yang tidak dibangkitkan oleh pihak-pihak (lihatSAMPLEperenggan 28–29).]

Cases referred to

Anjalai Ammal & Anor v Abdul Kareem [1969] 1 MLJ 22; [1968] 1 LNS 8, FC (refd)

Janagi v Ong Boon Kiat [1971] 2 MLJ 196 (refd)

Pembinaan SPK Sdn Bhd v Jalinan Waja Sdn Bhd [2014] 2 MLJ 322; [2016] 10 CLJ 112, CA (refd)

RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd [2010] 2 MLJ 188; [2010] 1 CLJ 665; [2010] 2 AMR 590, FC (refd)

Wisma Punca Emas Sdn Bhd v Dr Donal R O' Holohan [1987] 1 MLJ 393, SC (refd)

Yew Wan Leong v Lai Kok Chye [1990] 2 MLJ 152, SC (refd)

Legislation referred to

Civil Law Act 1956 s 28(4)(a)

Rules of Court 2012 O 18 r 15

Appeal from: Suit No BKI-22NCvC–120/11 of 2016 (High Court, Kota Kinabalu)

Chung Jiun Dau (Chung & Assoc) for the appellant.

Ryan Soo Chin Fook (with Cornelius Chua Chen Choon) (Lo & Yong) for the respondent.

Che Mohd Ruzima JCA:

INTRODUCTION

[1] There are two appeals heard together before us in respect of the assessment of damages decided by the Kota Kinabalu High Court on 20 November 2020. Civil Appeal No S-02(IM)(NCvC)-1973–12 of 2020 ('CA 1973') was brought by the appellant/plaintiff and Civil Appeal No S-02(IM)(NCvC)-1984–12 of 2020 ('CA 1984') was brought by the appellant/defendants.

[2] On 26 May 2022, we dismissed both appeals with no order as to costs.

[3] Aggrieved by our decision in CA 1973, the appellant/plaintiff applied to the Federal Court for leave to appeal part of the decision in respect of the non-granting of double rent or double value claimed under para 28(4)(a) of the

Civil Law Act 1956 ('the CLA 1956') in the assessment of damages before the High Court.

[4] On 14 February 2023, The Federal Court unanimously ordered that the appellant/plaintiff be granted leave to appeal against part of our decision. The question admitted for determination by the Federal Court is as follows:

> Whether a claim for double rental and/or double value under Section 28(4)(a) of the Civil Law Act 1956 needs to be specifically pleaded and/or prayed for separately from a claim for damages and/or compensation for trespass?

[5] For ease of reference, parties will be referred to as in the High Court, the plaintiff and defendants.

BRIEF BACKGROUND FACTS

[6] The plaintiff had leased an area from DBKK Holdings Sdn Bhd under a concession agreement and had expanded monies to develop the said area as a food court known as Food Square.

[7] The first defendant entered into a tenancy agreement dated 1 March 2010 with the plaintiff to rent an area of 5,167.03 sqft at the Food Square for the operations of the defendants' seafood restaurant ('the demised premises'). The term under the tenancy agreement of the demised premises was from 1 December 2009 to 30 November 2016.

[8] Sometime in September 2013, the first defendant ceased and refused to pay the rental and other amounts due under the tenancy agreement despite demands for payment from the plaintiff. The defendants had disputed the rights of the plaintiff to rent out the demised premises but at the same time continued to use the demised premises for their business. For the plaintiff, the defendants' actions amounted to a repudiation of the tenancy agreement and the plaintiff accepted the repudiation by terminating the tenancy agreement via a letter dated 4 November 2013 ('the termination letter') issued by the plaintiff's solicitors.

[9] Prior to the termination of the tenancy agreement, the defendants had intermittently used the Reserved Area, comprising of an area around 191.33 sqft, at the Food Square. They had occupied and taken possession of the Reserved Area for their business.

[10] Despite the termination of the tenancy agreement, the defendants continued to occupy the demised premises and the Reserved Area. They

refused to deliver up vacant possession of the demised premises and the Reserved Area, and continued using them for their business.

[11] The plaintiff's solicitors served the writ and amended statement of claim on the defendants on 5 December 2016 and 7 December 2016. Despite the service of the legal process, the defendants continued to occupy the demised premises and Reserved Area for their business. The defendants belatedly entered appearance on 3 March 2017 and 8 March 2017. Subsequently, the plaintiff applied for judgment against the defendants on 13 March 2017.

[12] On 5 June 2017, after the High Court heard arguments from the solicitors for the plaintiff and the defendants, judgment was entered in favour of the plaintiff against the defendants jointly and severally. Despite the judgment, the defendants still refuse to vacate and deliver up vacant possession of the demised premises and the Reserved Area to the plaintiff.

[13] The defendants gave up vacant possession of the demised premises on 5 October 2017 when the Sheriff executed a writ of possession on the demised premises. On 9 March 2018, the defendants removed the tables, chairs and other items from the Reserved Area after the documents for the committal proceedings were served on second and fourth defendants. However, the defendants did not removed the banners that they hung up above the Reserved Area. It was only on 1 April 2018 that the defendants finally remove all their things from the Reserve Area.

THE ISSUE

[14] Based on the question admitted for determination by the Federal Court, there is only one issue needed to be addressed, that is, whether a claim for double rental or double value under para 28(4)(a) of the Civil Law Act 1956 needs to be specifically pleaded and/or prayed for separately from a claim for damages and/or compensation for trespass?

OUR DECISION

[15] To begin with, the law on pleadings is well settled. There is a plethora of cases decided on the overriding principle related to the issues on pleadings. Generally, parties are bound by their pleadings and the court should not decide on the issue that was not pleaded. In *Anjalai Ammal & Anor v Abdul Kareem* [1969] 1 MLJ 22; [1968] 1 LNS 8, the Federal Court made the following observation:

> There is considerable authority in regard to the purpose and effect of particulars filed pursuant to O 19 r 7A of the Rules of the Supreme Court. At p 31 of *Halsbury*

(3rd Ed, Vol 3), the learned commentator has this to say:

> A party is bound by his pleadings unless he is allowed to amend them, and he is therefore bound by his particulars, which are, in effect, part of the pleadings under which they are delivered.

In *Thomson v Birkley* [1883] 47 LTR 700 Watkin Williams J says:

> The object of particulars is to prevent surprise, and to limit and particularise events in order that both parties should come to trial fully prepared for the issues.

In *Spedding v Fitzpatrick* [1888] 38 Ch D 410 at 413 Cotton LJ says:

> The object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save unnecessary expense, and avoid allowing parties to be taken by surprise.

In *Thorp v Holdsworth* [1876] Ch 637 at 639 Jessel Mr says:

> The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules of R XIX was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.

Finally, in *Yorkshire Provident Life Assurance Co v Gilbert & Rivington* [1895] 2 QB 114 at 152 Lindley LJ says:

> What is the effect of these particulars? I take it the effect of these particulars is this, that the issues to be tried are limited by these particulars in the first instance. I do not mean to say that leave cannot be obtained to add to the particulars — of course it can; but the moment these particulars are delivered, and until some further order is obtained for the delivery of further particulars, the effect of delivering the particulars is to cut down the matters in question in the action to the particulars.

Therefore, in my opinion, the learned trial Judge, in the instant case, had departed from the strict rules of procedure, in deciding the case on an issue not raised in the pleadings and on the assumption of a fact which the appellants were not obliged to call evidence to rebut ...

[16] The Supreme Court in *Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152 at p 154 had cited with approval Sharma J observation in *Janagi v Ong Boon Kiat* [1971] 2 MLJ 196 (*Janagi*'s case) on the function of pleadings and the duty of courts to follow rules of procedure and practice as follows:

> The court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact, it is not proper for the court to displace the case made by a party in its pleadings and give effect to an

entirely new case which the party had not made out in its own pleadings. The trial of a suit should be confined to the pleas on which the parties are at variance.

In the same case, the Supreme Court at p 155 had observed that:

> We would point out that this court has recently once again stressed the importance of pleadings in *Muniandy & Anor v Muhammad Abdul Kader & Ors* [1989] 2 MLJ 416 in which Mohamed Azmi SCJ stated at p 418 that:
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> > Unless the objection raised is merely technical, the importance of pleadings can be found in many authorities. The most instructive is perhaps by Lord Diplock in *Hadmor Productions v Hamilton* [1983] 1 AC 191 at p 233:
> >
> > > Under our adversary system of procedure, for a judge to disregard the rule by which counsel are bound, has the effect of depriving the parties to the action of the benefit of one of the most fundamental rules of natural justice, the right of each to be informed of any point adverse to him that is going to be relied upon by the judge, and to be given the opportunity of stating what his answer to it is ...
> >
> As the High Court had made a decision on an issue which was not raised by the parties in their pleadings, the appeal in this case must be allowed and the order of the learned judge in dismissing the plaintiff's claim set aside ...

[17] Before that, in *Wisma Punca Emas Sdn Bhd v Dr Donal R O' Holohan* [1987] 1 MLJ 393 at p 395, the Supreme Court also referred to *Janagi*'s case and considered that Sharma J had rightly held that the trial of a suit should be confined to the pleas on which the parties are at variance.

[18] Meanwhile, in *RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd* [2010] 2 MLJ 188; [2010] 1 CLJ 665; [2010] 2 AMR 590, the Federal Court clearly said that:

> ... It is a cardinal rule in civil litigation that the parties must abide by their pleadings. This is trite as can be seen from the decision of this court in *Menah Sulong v Lim Soo & Anor* [1983] 1 CLJ 26 where Ong Hock Thye CJ said:
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> > I think it is necessary in this case to emphasise once again that the courts should give their decision in strict compliance with the pleadings. As Lord Radcliffe said in *Esso Petroleum Co Ltd & Anor v Southport Corporation* [1956] 2 WLR 81 at p 91:
> >
> > > If an appellate court is to treat reliance as pedantry or mere formalism I do not see what part they play in our trial system.
> >
> [34] In fact, the Court of Appeal itself has reiterated this in *Amanah Butler (M) Sdn Bhd v Yike Chee Wah* [1997] 1 MLJ 750; [1997] 2 CLJ 79 where Gopal Sri Ram JCA (as he then was) said:
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> It is trite law that a party is bound by its pleadings.

[35] On this, we would like to add that it is not the duty of the court to invent or create a cause of action or a defence under the guise of doing justice for the parties lest it be accused of being biased towards one against the other. The parties should know best as to what they want and it is not for the court to pursue a cavalier approach to solving their dispute by inventing or creating cause or causes of action which were not pleaded in the first place. Such activism by the court must be discouraged otherwise the court would be accused of making laws rather than applying them to a given set of facts.

[19] On the same principle of law related to the rule of pleadings, this court in the case of *Pembinaan SPK Sdn Bhd v Jalinan Waja Sdn Bhd* [2014] 2 MLJ 322; [2016] 10 CLJ 112 has made the following observation:

[24] That classic, authoritative text on the rules of pleadings — Sir Jack Jacob & Ian S Gold rein, *Pleadings: Principles and Practice* — provides four 'objects' pleadings — their dual object in summary. Pleadings serve a two-fold purpose:

(a) first To inform each party what is the case of the opposite party which he will have to meet before and at the trial; and

(b) secondly concurrently to appraise the court what are the issues. The identity of the issues is crucial, not only for the purposes of trial, but also for the purposes of all the pre-trial interlocutory proceedings.

The object of pleadings in detail

(a) first to define with clarity and precision the issues or questions which are in dispute between the parties and fall to be determined by the court ...

(b) secondly to require each party to give fair and proper notice to his opponent of the case he has to meet to enable him to frame and prepare his own case for trial ...

(c) thirdly to inform the court what are the precise matters in issue between the parties which alone the Court may determine, since they set the limits of the action which may not be extended without due amendment properly made ...

... in *Blay v Pollard* and Morn's Scrutton LJ said:

> Cases must be decided on the issues on the record; and if it is desired to raise other issues they must be placed on the record by amendment. In the present case the issue on which the judge decided was raised by himself without amending the pleadings, and in my opinion he was not entitled to take such a course ...

(d) Fourthly To provide a brief summary of the case of each party, which is readily available for reference, and from which the nature of the claim and defence may be easily apprehended, and to constitute a permanent record of the issues and questions raised in the action and decided thereon so as to prevent future litigation upon matters already adjudicated upon between the litigants or those privy to them ... (at pp 3–4 of the text (1990 Ed).

[25] As evident from the passage above, not only are the immediate litigants bound by the rules of pleadings, so is the court.

> The court itself is as much bound by the pleadings of the parties as they are themselves. It is not part of the duty or function of the Court to enter into any

> inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by their pleadings. Indeed, the Court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties. To do so would be to enter the realm of speculation ... (*Esso Petroleum Co Ltd v Southport Corporation* [1956] AC 218).

[26] A decision based on an unpleaded case will as a rule occasion a failure of natural justice and will be liable to be set aside on appeal. It denies the litigant, the right to present his case fully before the judge on the unpleaded issue before the decision is made by the court. A corollary to this principle is the following: it is not the duty of the court to make a case for a party when that party does not raise, or wish to raise, a point in the litigation. *Janagi v Ong Boon Kiat* [1971] 2 MLJ 196; [1971] 1 LNS 42, states the position very clearly thus:

> A judgment should be based upon the issues which arise in this suit. If such a judgment does not dispose of the questions as presented by the parties it renders itself liable not only to grave criticism but also to a miscarriage of justice. It becomes worse and is unsustainable if it goes outside the issues. Such a judgment cannot be said to be in accordance with the law and the rules of procedure.

[20] With those strict principles of law on pleading in mind, we now move on to the pleaded case of the plaintiff. It is pertinent for us to sieve through the plaintiff's pleadings before the High Court. Via statements of claim dated 8 November 2016, the plaintiff had stated the salient facts of the tenancy agreement, inter alia, the defendants' default in paying the rent, the demand of the outstanding rental amount, the termination letter, and the alleged act of trespass committed by the defendants on the demised premises and the Reserved Area. The 'Particulars' of claim as stated in para 24 is as follows:

> For the period from November 2013, the Plaintiff has been deprived of the used of the Demised Area and would have been able to rent out the area at RM5.50 per square foot for the month of November 2013 and thereafter at the rate of RM6.50 per square foot per month. Had the Plaintiff been able to rent out the Demised Area to another, it would have collected RM1,143,190.80 in rental from November 2013 to the end of September 2016.

The first four prayer in the plaintiff's claims related to the injunctive relief and the rest of the claims are as follows:

> (5) The sum of RM85,203.13 representing rental in arrears as at 31 October 2013;
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> (6) Interest in the sum of RM57,596.35 representing interest calculated to 30 September 2016 on the rental in arrears of RM85,203.13;
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> (7) Interest at the rate of 1% per month calculated on a daily rest basis on the rental in arrears of RM85,203.13 from 1 October 2016 until payment;
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> (8) The sum of RM9,719.26 representing electricity charges in arrears as at 31 October 2013;

(9) Damages and compensation for trespass to be assessed for the period from 5 November 2013;

(10) Costs; and

(11) Any other or further relief as the Court deem fit.

[21] Then, the plaintiff decided to amend the statements of claim. On 28 November 2016, the plaintiff filed the amended statements of claim mainly amending para 24 which include the 'Particulars' and the plaintiff's the claims against the defendants as follow:

24. The ~~1st~~ Defendants ~~and the 4th Defendant~~ have been and continue to trespass on the Demised Premises and the Reserved Area in the conduct of the ir business(es) by maintaining their tables and chairs, aquarium structures and other property thereon and authorizing the use of those areas by staff and agents and other persons. ~~The 2nd Defendant and 3rd Defendant are jointly severally liable for being responsible in permitting, causing and/or directing the acts of the 1st Defendant that constitute the continuing tort or alternatively, for failing to direct the 1st Defendant to cease the continuing tort on their behalf or on behalf of the 1st Defendant.~~ The 2nd Defendant and 3rd Defendant are also liable under the terms of the Guarantee and Indemnity dated 1 March 2010.

24A. The Defendants have acted in contempt and in complete disregard of the Plaintiff's rights by illegally using the demised premises and the Reserved Area by conducting their business(es) thereon and profiting at the Plaintiff's expense for which the Plaintiff seeks, among other things, aggravated and exemplary damages.

Particulars

For the period from November 2013, the Plaintiff has been deprived of the use of the Demised ~~Area~~ Premises and would have been able to rent out the area at RM5.50 per square foot for the month of November 2013 and thereafter at the rate of RM6.50 per square foot per month. Had the Plaintiff been able to rent out the Premises to another, it would have collected RM1,175,997.60 in rental from November 2013 to the end of October 2016.

The Defendants' have illegally used the demised premises and the Reserved Area and wholly or partly owing to not paying rental as any ordinary business would need to, they have been wholly or partly enable to offer discounts or lower prices that has led to their business(es) being more competitive than a tenant at the Food Square. This had the effect of damaging the Plaintiff's bargaining position in negotiations for a rate under a new tenancy agreement with that tenant.

The Defendants have acted and continue to act in flagrant disregard of the Plaintiff's rights by erecting and or placing more items and structures on the demised premises and Reserved Area than what was there at the time of the termination of the tenancy agreement. The Defendants' actions were calculated to profit at the expense of the Plaintiff.

(1) An injunction compelling the Defendants to forthwith remove the tables and chairs, aquarium structures and all such other properties from the demised premises and all the furniture and items from the Reserved Area, and to restrain the

A Defendants whether by any servants or agents or otherwise howsoever from using the said area in any manner whatsoever;

(2) ~~(3)~~ An order that the ~~1st and 4th~~ Defendants to forthwith deliver up possession of the demised premises and the Reserved Area to the Plaintiff;

B ~~(4) An injunction compelling the 2nd and 3rd Defendants as directors of the 1st Defendant to cause and direct the 1st Defendant to forthwith deliver up possession of the Demised Premises and the Reserved Area to the Plaintiff;~~

(3) ~~(5)~~ The sum of RM85,203.13 representing rental in arrears as at 31 October 2013;

C ~~(6) Interest in the sum of RM57,596.35 representing interest calculated to 30 September 2016 on the rental in arrears of RM85,203.13;~~

(4) Agreed interest at the rate of 1% per month on the rental in arrears of RM85,203.13, amounting to RM51,845.88 as at 31 October 2016;

D (5) ~~(7)~~ Agreed interest ~~Interest~~ at the rete at the rate of 1% per month calculated on a daily rest basis on the rental in arrears of RM85,203.13 from 1 November ~~October~~ 2016 until full payment;

(6) ~~(8)~~ The sum of RM9,719.26 representing electricity charges in arrears as at 4 November 2013 ~~31 October 2013~~;

E (7) Agreed interest at the rate of 1% per month calculated on a daily rest basis on the electricity charges in arrears, amounting to RM7,008.12 as at 31 October 2016;

(8) Agreed interest at the rate of 1% per month calculated on a daily rest basis on the electricity charges in arrears of RM9,719.26 from 1 November 2016 until full payment;

F (9) Damages and compensation for trespass including aggravated and exemplary damages to be assessed for the period from 5 November 2013 until delivery up of possession of the demised premises and the Reserved Area to the Plaintiff;

(10) Judgment interest at the rate of 5% per annum on the damages and compensation awarded from the date of judgment until the date of full payment;

G (11) ~~(10)~~ Costs on a full indemnity basis; and

(12) ~~(11)~~ Any other or further relief as the Court deems fit.

H **[22]** From the plain reading of the plaintiff's statements of claim dated 8 November 2016 or the amended statements of claim dated 28 November 2016, it is crystal clear that the plaintiff had not raised any claim on double rental or double value of the demised premises. The question is, does the plaintiff have to plead its intention to claim for double rental or double value of

I the demised premises against the defendants, or it is sufficed that the plaintiff merely pleaded the material facts of the trespass after the tenancy agreement had been terminated since double rental or double value is chargeable by operation of law?

[23] To answer the question, first and foremost, it is pertinent for us to look at the relevant legal provisions on the issue. Subsection 28(4) of the CLA 1956 provides that:

> (4)(a) Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not.
>
> (b) Paragraph (a) shall have effect in Sabah subject to section 26 of the Rent Control (Business Premises) Enactment 1965 of Sabah [En 1 of 1966] and in Sarawak subject to section 19 of the Rent Control Ordinance of Sarawak [Cap 86].

[24] Clearly para 28(4)(a) of the CLA 1956 provides that, every tenant who stays on the landlord's property after the termination of the tenancy of that property is liable to pay double rent or double value of the property during the period of the stay. However, the right to charge double rent or double value under the law is not mandatory. The words 'at the option of his landlord,' after the words 'shall be chargeable,' denotes that the landlord had the choice to claim or not to claim double rent or double value of the property. Therefore, we are of the view that the right given to the plaintiff under para 28(4)(a) of the CLA 1956 to claim double rent or double value against the defendants is a chose in action or a cause of action that is subject to the strict rule of pleadings.

[25] Stem from the right that was optionally given under para 28(4)(a) of the CLA 1956, the plaintiff must state its intention to exercise the option to claim double rent or double value against the defendants in its statement of claim. In other words, the claim for double rental or double value is not a matter of right under the law and it must be pleaded in the statement of claim if the plaintiff opted to make the claim. Failing with, the plaintiff had deprived the defendants off their right to know with clarity and precision the issues or questions which are in dispute between them, and fall to be determined by the court. At the same time, the plaintiff should inform the court what are the precise matters in issue between the parties that the court may determine.

[26] In relation to the plaintiff's current pleadings, we find that the plaintiff had set the limits of its action against the defendants and it cannot be extended without any due and proper amendment. More precisely, the plaintiff had not yet opted to pursue its right under para 28(4)(a) of the CLA 1956 and therefore, the plaintiff is estopped from raising it and the court is not empowered or has jurisdiction to consider the matter. Moreso, it is not the duty of the court to make out a case for the plaintiff when the plaintiff does not raise or wish to raise the point in the pleadings. Therefore, we are not in agreement with the counsel for the defendants' argument that the double rent or double value is chargeable by operation of law and therefore, there is no requirement to

plead the matter as long as the material facts, which would satisfy the requirements of para 28(4)(a) of the CLA 1956, have been pleaded.

[27] Based on the unambiguous provision of the law, we are of the considered view that the claim for double rental or double value must be specifically pleaded. The general prayer as prayed by the plaintiff in para (9) of the plaintiff's claim which reads 'Damages and compensation for trespass including aggravated and exemplary damages, to be assessed for the period from 5 November 2013 until delivery up of possession of the demised premises and the Reserved Area by the Defendants to the Plaintiff' is insufficient to put in words the option opted by the plaintiff to make a claim for double rental or double value of the demised premises against the defendants.

[28] On the same issue, the law also requires that every statement of claim must state specifically the relief or remedy which the plaintiff intended to claims. Order 18 r 15 of the Rules of Court provides as follows:

> 15 Statement of claim (O 18 r 15)
>
> (1) A statement of claim shall state specifically the relief or remedy which the plaintiff claims; but costs need not be specifically claimed.
>
> (2) A statement of claim shall not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but, subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the endorsement of the writ without amending the endorsement.

[29] Obviously, the plaintiff had not specifically stated the relief to claim double rental or double value in the statement of claim. Even though the court has jurisdiction to grant any relief that it thinks fit and appropriate to the facts of the case, the requirement of the rule has to be followed by the plaintiff, especially in the present case, where the law requires that the plaintiff has to choose whether to make a claim for double rental or double value against the defendants. Bear in mind that the court is not entitled to decide a suit on a matter on which no issue has been raised by the parties.

CONCLUSION

[30] For reasons aforesaid, we find no merit in the plaintiff's appeal to warrant our appellate intervention. Accordingly, we are unanimous in dismissing the plaintiff's appeal with no order as to cost.

Appeal dismissed.

Reported by Ashok Kumar